IN THE HIGH COURT OF BOMBAY AT GOA
*****

WRIT PETITION NO. 377 OF 2004

Mr. Antonio Damiao Francisco
Caetano Ribeiro, s/o Aniceto
Joao Jose Antonio Ribeiro,
68 years old, Indian National,
residing Behind Porvorim Chapel,
Porvorim, Bardez, Goa. ... Petitioner

Versus

1. State of Goa, through the
Secretary (Revenue), Govt.
of Goa, having his office
at Secretariat, Panaji, Goa,

2. Collector of Goa with office
at Collectorate Bldg.,
Panaji, Goa,

3. Administrator of Comunidades
of Bardez, with office at
Administration Office of
the Comunidades of North Zone,
Altinho, Mapusa, Bardez, Goa,

4. Comunidade of Serula, through
its Attorney, with office at
Alto Porvorim, Bardez, Goa. ... Respondents.

Mr. J. E. Coelho Pereira, Senior Advocate with Ms. Bindiya Bhise, advocate for the petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Additional Government Advocate for respondent nos.1 and 2.

Mr. S. G. Bhobe, advocate for respondent no.4.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 7th September, 2004.

ORAL ORDER (Per Marlapalle, J.)

Heard Mr. Coelho Pereira, learned Senior Counsel with Ms. Bindiya Bhise, learned advocate for the petitioner, Mr. Nadkarni, learned Advocate General and Mr. Bhobe, learned advocate for respondent no.4.

2. This petition filed under Articles 226 and 227 of the Constitution of India prays for the following substantial reliefs which are in terms of prayer Clauses (c) and (d):-

> (c) For a writ, direction or order in the nature of certiorari quashing the Notice at Annexure "C" and quashing the Voters' List and/or "Able Components" list issued by the respondent no.3 in pursuance of the said Notice at Annexure "C".
>
> (d) For a Writ of Mandamus or any other appropriate writ, direction or order direction the respondents no.1, 2 and 3 to hold the elections on the basis of the list at Annexure "B" validly prepared as on November 2003.

3. There is no dispute that the elections of the respondent no.4 Comunidade have not been held after they were due in December, 2000 and this Court was required to consider the issue of holding elections in three different writ petitions. We may mention Writ Petition no. 645 of 2003 which was disposed of on 17th December, 2003 and Writ Petition No.414 of 2000 which was disposed of 15th June, 2004. In the first petition, an apprehension was raised that the elections would not take place due to various reasons and persons who were not eligible to be voters were likely to be included as such. By Order dated 17th December, 2003, this Court noted its satisfaction that the elections would proceed as proposed and regarding the voters list it was noted that the same issue could be decided by the Collector or his nominee, who

would be in charge of the election process, if objections to such illegally added voters names were raised. In the second petition disposed of by Order dated 15th June, 2004, this Court recorded the undertaking furnished by the learned Advocate General, that the elections for the triennium of 2004-2007 would be completed within a period of three months and in case there was any amendment to be carried out to the Code of Comunidades 1961, then a further period of one month would be required to complete the election process.

4. The Administrator published a notice dated 15th July, 2004 and referring to the order passed by this Court in Writ Petition no. 414 of 2000 as well as the directions issued by the Collector and District Magistrate, North Ghat, under Article 49 of the Code of Communicates, regarding preparation of the voters list of all the components and shareholders as well as able components, he also indicated that the list would be available for inspection and in case any objection was to be lodged, the same was to be submitted to the Administrator on or before 25th July, 2004. The final list of voters and able components was to be published on 30th July, 2004. It appears some objections were raised and also disposed of. Appeals were filed before the Administrative Tribunal and the Tribunal after allowing these appeals has directed some of the appellants names to be included. The Administrator has published the list of able components as on 30th July, 2004. There are in all 70 names and admittedly the

persons who would be contesting the elections must find their names in this list. The voters' list is said to be available with the office of respondent no.3 and under the charge of the Administrator. The Government of Goa has issued the notice of election to Serula Comunidade Committee on 12th August, 2004, which has been published in the Gazette on the same date and the election programme has been announced. Filing of nomination would commence on 11st September, 2004, and the final list of the candidates would be ready at 4 p.m. on the same day. The election is scheduled to take place on 12th September, 2004.

5. Shri Pereira, learned Senior Counsel invited our attention to the list of able components as on 30th August, 2003, and the said list consists of only 58 names. His challenge in this petition is mainly on two counts:-

(a) that the list of 70 names published by the Administrator as on 30th July, 2004 is illegal; and

(b) the Administrator has no such authority.

6. Article 42 of the Code of Comunidades deals with the preparation of the list of able components and the said list is required to be displayed. As per Article 43, once the lists are exhibited to the public and once their copies are affixed at the gate of the meeting place of the Board, an

appeal may be instituted to the Administrator in ordinary paper within equal time-limit. The Administrator is required to decide unfailingly, the appeal within 5 days and his decision written in the gate book of the Administration, will be open to public, as per Article 44. This decision of the Administrator is subject to appeal to be instituted within 8 days to the Administrative Tribunal, which is also required to decide the said appeal within equal time-limit of 8 days.

7. Mr. Nadkarni, learned Advocate General has pointed out that some persons had filed appeals before the Administrator and being aggrieved by his decision further appeals before the Administrative Tribunal were also filed. It has come in the affidavit filed by respondent no.3 that Appeal Nos.137 of 2004 and 138 of 2004 were pending when the said affidavit was filed. It is thus clear that any grievance raised against the list of able components could be raised in an appeal at the first instance before the Administrator and subsequently before the Administrative Tribunal. The present petitioner's name finds place in the list of able components published by the Administrator on 30th July, 2004 and, therefore, he has no reason to file an appeal.

8. The second ground is regarding the power of the Administrator. Our attention was invited to the amendment incorporated in Article 49 of the Code of Comunidades. Two provisos have been added. They read as under:-

> "Provided that in case of allegations of irregularities concerning the voters' list or any matters relating to the elections, the Government or the Collector or any officer authorised by the Government, in this behalf shall have powers to postpone the elections or appoint temporary managing committee or direct the Administrator to prepare a fresh voters' list or direct the Administrator or such other officer as may be specified by the Government to conduct the elections:
>
> Provided further that any action by the Government or the Collector or any officer authorised by the Government, taken on or after 30-11-2000 shall be deemed to have been taken in accordance with the above proviso."

Petitions were moved before this Court seeking directions against the State Government to initiate the election process and Government invoked its powers under the first proviso. The State Government or the Collector is empowered to direct the Administrator to prepare a fresh voters' list or direct the Administrator or such other officer as may be specified by the Government, to conduct the elections. The process of conducting the election in the instant case would, certainly, include the preparation of the list of able components as well as the list of voters. We, therefore, do not find any infirmity which warrants interference in the present election process and, in any case, if anyone is aggrieved by the outcome of the elections, a remedy of filing election petition is still available. Once the election process has been set in motion, we do not find any reason to interfere with the same and the election process has been set in motion as on 12th August, 2004 by publishing Gazette Notification. The State Government has given solemn

undertaking before this Court to hold the elections for the triennium of 2004-2007 and it must be allowed to go ahead with the election process.

9. We are, therefore, satisfied that this petition does not deserve to be entertained, at least at this stage. The petition is, therefore, rejected summarily.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

mc.